

## **LIABILITY**

### **Definitions**

**“Curtailment”** means a reduction in scheduled Transmission Services in response to a transmission capacity shortage resulting from adverse [NOTE: variation of MISO definition] system reliability conditions. [NOTE: original text matched the OATT]

**“Electric Disturbance”** means any sudden, unexpected, changed or abnormal electric condition. An Electric Disturbance may include outages, high or low frequency, abnormal voltage, or oscillations in the Power System. One Electric Disturbance includes all such conditions on all systems directly or indirectly interconnected after an Electric Disturbance originates, until such systems are restored to a stable condition of normal voltage and frequency and are capable of carrying normal load. [Modified from the WIS Insurance Policy]

**“Power System”** means a single integrated electric power grid usually characterized by ownership, rental, lease, control or operation by a single person or entity. A “Power System” consists of integrated electric distribution facilities, generating facilities or transmission facilities, or any combination of the three, and includes transmission lines, distribution lines, substations, switching stations, generating plants and all associated equipment for generating, transmitting, distributing or controlling flow of power. The term “Power System” shall include any devices or equipment by which information is originated on an electric system or by the entity operating such system, by which such information is transmitted, and by which such information is received either for information or for operation of the system, whether by the originating system or by another system. [Original definition is same as Electric System definition in TOA with the addition of generation facilities.]

**“Party or Parties”** means [NOTE: use tariff definition once developed]

**“Direct Damages”** means all damages except loss of profit, loss of revenue, loss of production, loss of earnings, loss of contract, or any other indirect, special, punitive, exemplary or consequential loss or damage.

**“Replacement Power Cost”** means the price at which a Party, acting in a commercially reasonable manner, effects a purchase of comparable electric energy and capacity at the delivery point in place of the electric energy and capacity not delivered. If the Replacement Power Cost cannot be determined, it shall be deemed to be 125% of the applicable Mid-Columbia Dow Jones daily on-peak and off-peak price index, until such time as a published hourly Northwest power price index is established and available.

**“Wrongful Dispatch Order”** means an operating instruction that, under the applicable RTO West tariffs and agreements, RTO West was not authorized to communicate to a Party or a Scheduling Coordinator.

## **10. Force Majeure, Indemnification, and Limitations of Liability and Damages**

**10.1 Force Majeure.** An event of Force Majeure means any cause beyond a Party’s *reasonable* control, including without limitation, any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, Curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities.. A Force Majeure event does not include an act of negligence or intentional wrongdoing. No Party will be considered in default as to any obligation under this Tariff if prevented from fulfilling the obligation due to an event of Force Majeure. However, a Party whose performance under this Tariff is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations under this Tariff.

**[NOTE:** *The Filing Utilities are proposing removal of the indemnity section because it does not provide adequate protection for RTO West and Transmission Owners and adds nothing to the proposal previously made by the Filing Utilities]*

### **10.2 Limitation of Liability.**

**10.2.1** Nothing in this section 10 is intended to affect rights and obligations as between the parties to any agreements to which RTO West is not a party. Nothing in this tariff is intended to waive any defense to liability under any applicable law. Nothing in this tariff is intended to affect any distribution entity’s

liability or limitations of liability as a distribution company to its own distribution customers.

**10.2.2** Except as provided in section 10.3, no Transmission Owner, generation owner or operator, load facility owner or operator, Scheduling Coordinator, power marketer, broker, aggregator or other agent shall be liable, whether based on contract, indemnification, warranty, tort, strict liability or otherwise, to any Transmission Customer, any third party or any other person or entity for any damages whatsoever, including, without limitation, direct, incidental, consequential, punitive, special, exemplary or indirect damages, arising or resulting from an interruption, deficiency or imperfection of service on the Transmission System or service on any directly or indirectly interconnected system caused by an Electric Disturbance, except to the extent that such person or entity is found liable for gross negligence or intentional misconduct, in which case no such liability shall exist for any incidental, consequential, punitive, special, exemplary or indirect damages.

**10.2.3** Except as provided in section 10.3, RTO West shall not be liable, whether based on contract, indemnification, warranty, tort, strict liability or otherwise, to any Transmission Customer, any third party or other person or entity for any damages whatsoever, including, without limitation, direct, incidental, consequential, punitive, special, exemplary or indirect damages arising or resulting from an interruption, deficiency or imperfection of service on the Transmission System or service on any directly or indirectly interconnected system caused by an Electric Disturbance, except to the extent that RTO West is found liable for gross negligence or intentional misconduct, in which case RTO West will not be liable for any incidental, consequential, punitive, special, exemplary or indirect damages.

**10.2.4** No Party shall be liable for damages arising or resulting from an interruption, deficiency or imperfection of service on the Transmission System or service on any directly or indirectly interconnected system caused by an Electric Disturbance, resulting from electric system design common to the national or

regional electric utility, industry or Power System operation practices or conditions common to the national or regional electric utility industry.

**10.2.5** No Party shall be liable for damages arising or resulting from an interruption, deficiency or imperfection of service on the Transmission System or service on any directly or indirectly interconnected system caused by an Electric Disturbance resulting from acts or omissions in compliance with a directive from RTO West.

**10.2.6** No Transmission Owner or distribution entity shall be liable for claims by or on behalf of distribution customers of any other Transmission Owner or distribution entity for damages arising or resulting from an interruption, deficiency or imperfection of service on the RTO West Transmission System or service on any directly or indirectly interconnected system caused by an Electric Disturbance.

### **10.3 Limitation on Direct Damages.**

**10.3.1** For each incident in which a Transmission Owner, generation owner or operator, load facility owner or operator, Scheduling Coordinator, aggregator or other agent is found liable for damages resulting from an interruption, deficiency or imperfection of service on the Transmission System or service on any directly or indirectly interconnected system caused by an Electric Disturbance, such entity's liability in total to all persons or entities so affected shall be limited to Direct Damages in an amount not to exceed the greater of \$500,000 or, in the case of a Transmission Owner, in an amount determined by multiplying 0.0025 by the Transmission Owner's annualized Company Costs, except to the extent that such entity is found liable for gross negligence or intentional misconduct, in which case the preceding limits Direct Damages shall not apply.

**10.3.2** For each incident in which RTO West is found liable for damages resulting from an interruption, deficiency or imperfection of service on the Transmission System or service on any directly or indirectly interconnected system caused by an Electric Disturbance, the RTO West's liability in total to all persons or entities so affected shall be limited to Direct Damages, but in an

amount not to exceed \$5,000,000, except to the extent that RTO West is found liable for gross negligence or intentional misconduct, in which case the preceding limits on Direct Damages shall not apply.

**10.4 Liability for Wrongful Dispatch Orders.**

**10.4.1** This section shall apply to claims by a Party against RTO West for damages arising from a Wrongful Dispatch Order issued by RTO West.

**10.4.2** In the event RTO West issues a Wrongful Dispatch Order to a Party [or a Scheduling Coordinator?], then in such event:

**10.4.2.1** No provision of this Tariff shall be construed as requiring any Party to follow such operating instruction; and

**10.4.2.2** If a Party complies, or attempts to comply, with such a Wrongful Dispatch Order and such Party incurs loss or damage as a result, then in such a case such Party shall be entitled to recover from RTO West only as follows, depending on the nature of the affected transaction:

**10.4.2.2.1** Where a sale schedule has been interrupted by RTO West and the damaged Party is a purchaser purchasing for its own load, the damage Party may recover the amount by which the Replacement Power Cost (actually purchased or for which liquidated damages are paid) exceeds the price at which the purchase transactions sale would have occurred absent the Wrongful Dispatch Order, less any liquidated damages paid to the damaged Party by a third person or entity.

**10.4.2.2.2** Where a generator specific sale schedule has been interrupted by RTO West and the damaged Party is selling power into the market, the damaged Party may recover the amount by which Replacement Power Cost exceeds the fuel and variable operation, and maintenance cost and a reasonable allocation of the overhead, depreciation and fixed costs allocable to the generation of electric energy of such generator, plus any liquidated damages that the damaged Party is legally obligated to pay as a result of the

schedule interruption less any liquidated damages paid to the damaged Party by a third person or entity.

**10.4.2.2.3** Where a generator specific sale is from a seller generating its own generation, the damage Party may recover the amount of margin lost by such Party, measured as the difference between the original sale price and the price the seller actually obtained for resale of the interrupted capacity and energy, or absent resale, measured as the original sales price less the fuel and variable operation, and maintenance cost not incurred by such Party, provided that such Party makes reasonable efforts to resell such capacity and energy.

**10.4.2.2.4** Where a sale schedule is interrupted by RTO West and the damaged Party is a purchaser that has resold the purchased generation at wholesale, the damaged Party may recover either (1) the amount by which Replacement Power Cost exceeds the interrupted original purchase cost, plus any liquidated damages that the damaged Party is legally obligated to pay as a result of the schedule interruption, less any liquidated damages paid to the damaged Party by a third person or entity; or (2) the margin between the original purchase and original sale as reduced after the contract remedies of the original purchase and original sale are applied.

**10.4.2.2.5** Where a sale schedule has not been interrupted by RTO West, but the damaged Party is a generating Party selling its own generation, which Party was prevented from making a sale as a direct result of a Wrongful Dispatch Order, the damaged Party may recover an amount equal to the quantity of electric energy that would have been sold priced at 125% of the applicable Mid-Columbia Dow Jones daily on-peak or off-peak index price (until such time as a published hourly Northwest power price index is established and available), or such other applicable

index as agreed by the Parties, less the fuel and variable operation and maintenance costs and a reasonable allocation of overhead, depreciation and fixed costs allocable to the generation of electric energy which would have been incurred had the sale occurred.

**10.4.2.3** With respect to claims made under section 10.4.2.2, a claiming Party shall provide reasonable justification to support its claim.

**10.4.3** The amounts recoverable under section 10.4.2.2 are a reasonable estimate of loss and not a penalty, and represent the sole and exclusive remedy against RTO West for a Wrongful Dispatch Order.